1: Tew E-4 (no date) 1950 FT7 Yao FT7

office tended to become hereditary. Each councillor had his own village which he administered as a headman. A second set of officials were the court assessors, *mapungu*, who, unlike the councillors, were not in charge of villages of their own in addition to their court duties. Their office was not hereditary and they were chosen for their wisdom and their debating ability. They lived at the court of the chief and their main duty was to sift the evidence in the judicial cases which came before him.

The village headmen were expected to send elephant tusks to the chief (receiving small gifts in return), and to invite him to a yearly beer drink. Like the chief, the village headman governed through a council of the most important men in his village. They constituted a kind of village court over which he presided, and in the old days he could give capital sentence, or award a fine of as many as four slaves. Appeal from his decision lay to the court of the superior headman, or to the chief. Important cases would be reported direct to the chief. Most crimes would be settled by compensation. In cases of murder, several slaves were paid to the kin of the victim, and a fine for spilling blood to the chief. When compensation was handed over, the recipient always returned some part of it as sign that friendship was restored.[1]

Macdonald's further account of the treatment of crime shows how weak was the political organization, in spite of the apparent orderliness of the system of inferior and superior courts. A murderer caught red-handed might be killed at once. If captured alive he might be ransomed on payment of a fine of from four to twenty slaves, some of whom might be killed to accompany the dead. If the murderer escaped a relative of his would be captured and ransomed. This applied to murders occurring among parties friendly to one another and living in the same village. If the murderer was from another village, the injured village, if strong enough, would fall upon the other and kill and enslave the inhabitants. If not strong enough, the chief might be called in to help to annihilate the guilty village.[2]

Modern Administration

In the whole of Nyasaland there must be between thirty and forty Yao chiefs. In the districts of Liwonde, Fort Johnston, and Zomba, where 60 per cent. of the Yao population is concentrated (1931 boundaries), there are at least fifteen such chiefs. Not all those who have the rank of chief in the old Yao system are recognized as Native Authorities or even as Sub-Native Authorities by the Nyasaland Administration, and many Sub-Native Authorities would be full chiefs in the Yao system, and quite independent of the Native Authorities under whom they are placed.

Nowadays the chief has lost many of his former claims to status. He no longer has monopoly of the trade to the coast, for goods are brought in by Indian traders and bought by African tobacco growers or returned labour migrants. He can no longer use his slaves to increase his wealth by running slaving expeditions. His tribute of food and ivory has ceased, and he can no longer entertain lavishly, but he is still expected to give burial cloths and to make gifts to headmen on their succession to office. Some of his councillors have been made court assessors, and are paid for those duties, but others are expected to work for him unpaid. Some chiefs do reward councillors who retain their traditional status but are not officially recognized as assessors by the

[1] Macdonald, 1882, vol. i, pp. 136-8; Stannus, 4, 1922, p. 279.
[2] Macdonald, op. cit., pp. 170-1.

2: Mitchell E-5 (1946-1949) 1956 FT7 Yao FT7

175 622 is his relatives that are the village gods. Everyone that lives in the village recognizes these gods but if anyone removes to another village he changes his gods. He now recognizes the gods of his new chief. One wishing to pray to the god (or gods) of any village naturally desires to have his prayers presented through the village chief, because the latter is nearly related to the village god, and may be expected to be better listened to than a stranger.[1]

In this quotation the word 'chief' is used for village headman. In Yao the same term is used for both the chief of the country and the chief of the village (*mwenye*).

175 672 681 It is clear from MacDonald's description that foreign villages were looked upon as undifferentiated wholes. When discussing punishment in general he writes:

696 We find that almost every offence may be punished by death, but when an offender is not redeemed, the particular punishment is left to the headman of the injured party. For instance, if a headman of Kumpama's go and say, 'Chenyono has killed a subject of mine; I have caught a subject of his and want to kill him,' the chief's answer will be, 'He has done you wrong, do according to your heart (*poli mtima wenu*).' The punishment is thus inflicted not by the criminal's own chief, but by the injured party, and it may fall, not on the guilty person, but on one connected with him.[2]

For example, he describes how some children had been carried off from Che Lomoni's village one night in 1880.

Towards the end of 1880 [he recounts], Che Lomoni, a Blantyre headman, captured two men from Mpingwi, and put them in slave-sticks. They belonged to the village that had kidnapped the children a few months before, and native law did not require proof that the men were personally guilty. They were undoubtedly innocent. Still they were kept in close confinement till their friends returned the captives in February.[3]

175 622 The village headman—called the 'owner of the village' (*asyene musi*)—was the representative of the village in all public transactions, and also the representative of such higher authority as existed, to the village members. Duff MacDonald writes: 'A chief represents and is responsible for all his people. If anyone wish to treat with a native village it is with the village

[1] MacDonald, *Africana*, i, 65.
[2] MacDonald, *Africana*, i, 186. [3] MacDonald, *Africana*, ii, 234.

2: Mitchell E-5 (1946-1949) 1956 FT7 Yao FT7

692 but some also on having killed children by *ndaka* [1] (a disease
[673] caused by the mystical influence of sexual intercourse). Secondly, other cases not brought to the court are petty squabbles which do not involve heavy compensation. Examples of these disputes are personal quarrels, disputes over land ownership, petty theft and so on. The Native Authority's court handles mainly cases arising from adultery, which involve compensation varying from £1 10s. to £5; and theft and assault for which similar compensation may be payable. If the case is brought up to the chief's court there is a mechanism whereby the compensation
696 may be enforced. Ordinarily, in those cases which are not tried in the court house, there is no legal sanction behind the payment of the compensation, so that if a man defaults in payment no legal pressure can be brought to bear on him. It is for this reason that such cases are tried in the court house.

695 The cases are heard by the court assessors who call the wit-
693 nesses and cross-examine them. Sometimes a chief or his representative is in the court, as at Kawinga's court, but sometimes as in Chiwalo's court, the chief never comes to the court house at all. After the evidence is sifted, one court assessor takes the case to the chief and tells him about it. On the basis of the court assessor's analysis he awards compensation and imposes fines. The court assessor then takes this information back to the court house, reassembles the protagonists, and announces the chief's decision. The losing party has then the opportunity to appeal, first to the court of the Native Authority, if the case was tried in a Subordinate Native Authority's court, and then to the District Commissioner.

Cases tried by the chief in his extra-Administrative capacity are usually tried outside the court house. The same personalities take part in the trial but they act now with reference to a different set of values. The procedure is exactly the same, except that in Chiwalo's area the chief is present at the hearing. He sits somewhat aside from the main body of people but within hearing distance, weaving a mat or making nets while the case is being tried.

692 In minor cases, if either of the parties is dissatisfied with the
643 decision, he may take the case up to the chief for arbitration and, theoretically, may then take it from him if he is a Subordinate

[1] See Chap. V, p. 112.

3: Stannus D-5 (ca. 1912) 1922 FT7 Yao FT7

643 ivory by his own hunting parties or as a kind of tithe on other hunting expeditions. The ground tusk, i.e. the tusk on the side on which the elephant falls when killed, was the chief's share. In the same way, the hind leg on the ground side of any game animal killed was sent to the chief. He took a share of the spoils of war and most of his people yearly gave him either service in building houses, etc., or kind in the form of food-stuffs, but he enforced no service and levied no tax, except for the making of a new burial place.[1] New settlers in his village were expected to invite him to drink beer made with their first crops.

In return, he always provided cloth to invest the body of the dead. He also made presents at the time of *Unyago*.[2]

A chief's life, therefore, may not be "all beer and skittles," though he consumes a good deal of the former and a kind of skittles[3] was a favorite pastime of one of the Malemyas. A saying embodying this idea was used when pleading for a man who had 538 committed adultery with his chief's wife "one who carries a tortoise (on a string over his back) is likely to get his clothes soiled"; a man has to put up with the troubles his belongings bring him. So a chief must bear with his own people who do wrong.

643 Ample opportunity for exercising such forbearance was provided, since the chief was formerly the adjudicator of all disputes and dispenser of justice in all crimes. The headman 642 did the same in a smaller way but appeal could always be made to the chief. Cases were heard by the chief sitting in council. He and his headmen and elders would assemble in the village open space and here cases were stated, often at great length.

Each party to the case would employ some man well known for his powers of oratory as leading counsel. The speaker for the plaintiff would start proceedings by a recital of all the evidence he could collect. After him would follow innumerable speakers, whether actual witnesses or not, each telling as good a story as he could, and the defendant's case would then be put by his representatives. There was no cross-examination but at the end, a summary was made and judgment given. A chief often took the advice of some one of his old men whom he trusted.[4] The chief received no payment for his services, except in the case of murder; neither did the "counsel" receive anything for their efforts.

674 Crimes. Causing the death of a person by witch medicine, *usuwi*, was the most heinous 654 crime; a *usuwi* ordeal might be held, but if the offense was proved, burning was the punishment which usually followed.

649 The offense second in gravity was adultery. This might be expiated by payment or by death, according to the circumstances under which it occurred; mutilation was often 646 performed in the case of a chief's wife. All death sentences with the exception of those

[1] Vide supra, p. 244. [2] Vide supra, pp. 242, 264. [3] Vide infra, p. 282.

[4] The old Malemya (Nakatumbu) has some very fine men among his counselors. Kanukuya and Chinjale, the latter renowned for his oratory, were his chief advisers in legal matters. Nakaka, a slave, was his master in all personal and family affairs, while Chekusenga was in charge of all ceremonies and served with his assistant, Mpenje, as high priest on all occasions of intervention. Others acted as his counselors, such as Mkapili who always went on any missions to the Angoni, among whom he was known as Ndanjira.

3:Stanman D-5 (ca. 1912) 1922 FT7 Yao FT7

for witchcraft were carried out by strangling with a piece of calico at a place appointed for the purpose some miles from the chief's village. [674] [696]

There was no case against a man who seduced an unbetrothed girl, the latter being considered entirely at fault. [684]

After divorce, the children always remained with the mother. The man left his wife after the case, saying, "I will take my spear and some of the goats and chickens, but the children will always know their father." [686]

Murder was a question of compensation to the deceased's relatives and was not punished by death. [682]

Stealing was a serious offence but many who were found guilty were rather despised than punished. The thief with the stolen goods tied about his body but otherwise stripped naked would be driven through the village and prodded with sticks to the sound of drums and hoots of derision. [685] Most crimes, however, might be punished by exacting compensation. Payment took the form of goods or slaves. In the case of murder, the accused might have to pay several slaves to the deceased's relatives, and in addition, a fine to the chief for spilling blood, consisting perhaps of one slave. The amount of compensation expected was mentioned by the plaintiff in the case. One of the expressions used was, "My compensation must cover an ant hill," meaning enough slaves, standing hand in hand, to surround an ant hill; ant hills in this country are sometimes very big. If a man had no slaves, he would send his relatives or he himself might be forced to become the slave of the plaintiff. There is a saying anent this practice: [681]

Chitumbili wachitwile nichila wakwe/
The monkey they tied (with) tail his (own). [539]

Slaves passed over to a man in payment for crime became free men; they were an addition to the village and might even be adopted in place of a murdered individual. [567]

When compensation was made by the defendant to the plaintiff, the latter always returned some part of it as a sign that friendship was again established.

Goods or money received in compensation for murder, i.e. blood money, might not go for the purchase of food or clothing. Detection of a guilty party by means of magic and proof of guilt or otherwise by ordeal poison are dealt with elsewhere.

Bluffing anyone into giving something for nothing, obtaining goods by false pretence, was not considered a crime, as anyone was "fair game." For instance, a party of youths would waylay a man with a load of fish, saying they had been ordered by their headman to commandeer it. If the man parted with his fish, so much the worse for him; if he showed fight, he was respected and friendship made with a give-and-take of fish and snuff. Such bluffing is called *kulya nsasa*, "to eat with them." To add to their appearance of *bona fides*, the party might have secretly borrowed some well-known article belonging to their headman. [674]